

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIAIVAN LEE MATTHEWS,
Plaintiff,

v.

T. FOSS, et al.,
Defendants.

Case No. 23-cv-02800 BLF (PR)

**ORDER GRANTING MOTION FOR
EXTENSION OF TIME TO FILE
DISPOSITIVE MOTION; DENYING
MOTION FOR DEFAULT
JUDGMENT**

(Docket Nos. 13, 17)

Plaintiff, a state prisoner, filed a civil rights complaint pursuant to 42 U.S.C. § 1983, against the current and former Wardens of Salinas Valley State Prison (“SVSP”), where he is currently confined. Dkt. No. 1. On July 14, 2023, the Honorable Magistrate Judge Susan van Keulen found the complaint stated a cognizable claim and ordered service on Defendants, who were directed to file a dispositive motion or notice regarding such motion no later than ninety-one days from the date the order was filed, *i.e.*, by October 13, 2023. Dkt. No. 9 at 3. On July 21, 2023, the California Department of Corrections and Rehabilitation (“CDCR”) filed their Report of E-service Waiver for the two Defendants. Dkt. No. 11.

The matter was reassigned to the undersigned on November 8, 2023. Dkt. No. 19. A review of the docket shows the following pending matters. On October 23, 2023,

1 Plaintiff filed a motion for default judgment based on Defendants' failure to respond in the
2 time provided. Dkt. No. 13. On November 7, 2023, the Waivers of Service were returned
3 executed, Dkt. No. 14, an Answer to the complaint was filed, Dkt. No. 15, and Defendants
4 filed a motion for an extension of time to file a dispositive motion based on good cause
5 and excusable neglect, Dkt. No. 17.

6 In support for their untimely motion for an extension of time, Defendants' attorney,
7 Deputy Attorney General James Mathison, submits a declaration stating that his office
8 received the case from the CDCR on October 26, 2023, and the case was assigned to him
9 on November 1, 2023. Dkt. No. 17 at 3. His research into the matter revealed that the
10 CDCR had failed to notify the Office of the Attorney General of the Report of E-service
11 Waiver at the time it was filed with the Court, on July 21, 2023. *Id.* at 4. On October 26,
12 2023, the CDCR was requested to confirm that this case was on their radar as the Court
13 was still awaiting appearance of counsel; that request triggered the case materials being
14 forwarded to the Attorney General's Office. *Id.* at 3-4. Defendants assert that they were
15 not notified of the matter until after the dispositive motion deadline has expired due to an
16 inadvertent mistake, and now promptly move for an extension of time until February 6,
17 2024. *Id.* at 2, 4.

18 Good cause appearing, the motion is **GRANTED**. Defendants' summary judgment
19 motion shall be filed **no later than February 6, 2024**.

20 Plaintiff's opposition to the dispositive motion shall be filed with the Court and
21 served on Defendants no later than **twenty-eight (28) days** from the date Defendants'
22 motion is filed. Defendants shall file a reply brief no later than **fourteen (14) days** after
23 Plaintiff's opposition is filed.

24 In light of Defendants' showing of good cause for their untimely appearance,
25 Plaintiff's request for default judgment is **DENIED**. Dkt. No. 13.

26 This order terminates Docket Nos. 13 and 17.

27 ///

IT IS SO ORDERED.

Dated: __November 9, 2023__


BETH LABSON FREEMAN
United States District Judge

United States District Court
Northern District of California

Order Granting EOT to file Disp. Mot; Deny Def. Judg.
PRO-SE\BLF\CR.23\02800Matthews_eot-MSJ